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Honorable Whitman L. Holt
Chapter 11

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11 *Plan Agent*

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UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

In re:
MENSONIDES DAIRY, LLC, and
ART & THERESA MENSONIDES,
Debtors.

CHAPTER 11
No. 18-01681-WLH11 LEAD CASE
No. 18-01683-WLH11

DECLARATION OF MATTHEW
MCKINLAY IN SUPPORT OF (A)
MOTION TO SELL DAIRY'S REAL
PROPERTY BY AUCTION AND
CERTAIN RELATED RELIEF AND
(B) MOTION TO SELL DAIRY
EQUIPMENT AND VEHICLES BY
AUCTION

I, Matthew McKinlay, declare:

1. I was appointed as Plan Agent (the "Plan Agent") of the Debtors' First
Amended Joint Chapter 11 Plan of Reorganization [Docket No. 479] (the "Plan")

DECLARATION OF MATTHEW MCKINLAY -
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1 pursuant to the Order Appointing Plan Agent [Docket No. 959] (the “Plan Agent
2 Order”). I have personal knowledge of the facts set forth herein. I submit this
3 Declaration in support of the (a) Motion to sell the Dairy’s Real Property by Auction
4 (the “Real Property Motion”) and (b) Motion to Sell Dairy Equipment and Vehicles
5 by Auction (together with the Real Property Motion, collectively, the “Motions”)¹.

6 2. Upon my appointment as Plan Agent pursuant to the Plan Agent Order, I
7 immediately turned my attention to preserving and maintaining the Debtors’ business
8 operations and assets in preparation for the ultimate sale of the Dairy and Dairy Assets.
9 However, upon taking control of the Debtors and after certain of the Mensonides
10 family members had rejected my offer to continue working for the Dairy in
11 management roles, I discovered that the Dairy’s available cash was seriously deficient
12 to fund operations or meet the Dairy’s ongoing financial obligations. This required
13 me to request and receive additional financial support from Northwest in order to
14 stabilize operations and fund ongoing expenses.

15 3. I also determined that the Mensonides family had taken substantial
16 actions to disrupt the Dairy’s operations. These actions included, among other things:

- 17 a) removing critical assets and equipment from the Dairy with the help of third
18 parties such as Narom and Sharon Berg, Pioneer Commodities LLC and
19 others;
- 20 b) withdrawing substantial funds belonging to the Dairy for unauthorized
21 purposes;
- 22 c) leaving almost no feed on site to care for the livestock;
- 23 d) notifying employees that the Dairy was “shutting down” and paying out all
24 accrued paid time-off (PTO); and
- 25 e) Removing and shredding critical business records, including vehicle titles,

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¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motions.

1 employee files, the Nutrient Management Plan, and so forth.

2 4. I also discovered that the Dairy was missing several critical pieces of
3 equipment that collectively held an appraised value of \$467,200.00 (the “Missing
4 Equipment”).

5 5. On August 10, 2022, the court held a hearing on the Enforcement Motion
6 [Docket No. 964]. At the hearing, the court referred the parties to Judge Corbit to
7 attempt to settle their disputes. Unfortunately, mediation with Judge Corbit yielded
8 no tangible results.

9 6. While I was ultimately able to stabilize the Dairy’s milk production and
10 milking herd and cleansed the livestock herd of *bacillus cereus*², my problems with the
11 Mensonides and other parties in interest continued. In particular, I began to discover
12 that much of the Missing Equipment had been relocated through one or more of the
13 Mensonides family members’ efforts throughout the greater Mabton, Washington area.
14 As a result, I sought to retrieve the Missing Equipment and other property belonging
15 to the Dairy.

16 7. In addition to retrieving Missing Equipment and reviving the Dairy’s
17 operations, I also recognized that removal of the Mensonides’ family members from
18 the Dairy would be necessary to implement the sale of the Dairy. To begin this
19 process, I offered a solution that would result in Art and Teresa Mensonides as well as
20 Auke and Joreen Bruinsma (the “Bruinsmas”) consensually vacating the Dairy
21 premises in a reasonable time and manner. Unfortunately, the Mensonides and
22 Bruinsmas rejected this offer, prompting me to obtain a court order confirming his
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24 _____
25 ² *Bacillus cereus* is a spoilage microorganism that has been present in the Dairy’s herd for several
26 years. This prevalence of this contaminant exceeded thresholds set by the Northwest Dairy
Association (“NDA”), which limited how the Dairy’s milk could be produced. In November 2022,
NDA notified the Plan Agent and his staff that the contaminant had been reduced significantly over
the past four months, and that NDA is now able to expand the number of products that the Dairy’s
milk can be used for. This also opens the Dairy to new processing facilities (including the one ~10
miles away from the Dairy in Sunnyside, WA) the Dairy’s milk can be sent to.

1 ability to terminate the possessory interests of and initiate eviction proceedings against
2 the Mensonides and Bruinsmas.

3 8. In addition to the above referenced issues, the Dairy also began
4 experiencing several unrelated problems that were also beyond my control. As a result
5 of the worldwide supply chain and inflationary issues, lower than projected 2022
6 Dairy-grown and harvested feed volume, price gouging and other factors, the Dairy's
7 feed costs exceeded initial projections by roughly 30%. This, in addition with
8 unbudgeted manure management freight costs, seriously impacted the Dairy's cash
9 flow. Further, milk prices have dropped by roughly 20% over the last several months
10 which has resulted in significantly reduced revenues to the Dairy.

11 9. Given the Dairy's liquidity issues resulting from the foregoing problems,
12 I determined it was necessary to sell up to 2,500 head of the Dairy's replacement heifer
13 cattle (the "Listed Dairy Cattle") by auction to reduce operating expenses and generate
14 much needed cash to continue operating the Dairy and work towards a sale of the Dairy
15 and its assets.

16 10. While the sale of the Listed Dairy Cattle will generate much needed cash
17 for the Dairy, operating and administrative costs have continued to strain the Dairy's
18 liquidity. Specifically, the rising feed and administrative costs combined with lower
19 revenues have made it difficult to maintain the Dairy's herd. I believe that these
20 problems will only be exacerbated throughout the coming winter months. In addition
21 to the foregoing, I have determined that the sale of substantially all of the Dairy Assets
22 to a prospective purchaser as a going concern under acceptable terms is becoming less
23 likely. As a result, I decided that the sale of the Dairy's remaining Livestock as part
24 of a broader plan to sell the Dairy's remaining assets, including the Equipment and
25 Titled Vehicles, was in the best interests of the Debtors' estate for the following
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DECLARATION OF MATTHEW MCKINLAY -
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1 reasons.

2 11. As an initial matter, the Dairy's limited cash has constrained my ability
3 to both operate the Dairy and pursue a drawn-out sale process. Thus, I do not believe
4 that the Dairy can fund the administrative expenses associated with negotiating the
5 terms of an asset purchase agreement and providing a lengthy due diligence period to
6 a potential purchaser for the Dairy Assets. *See id.* Further, any purchaser would likely
7 demand that the sale be free and clear of any liens, interests and claims and I am unable
8 to guarantee that such a sale would be approved. Given these contingencies, I believe
9 that the sale of the Dairy Assets by auction is in the best interests of the Debtors' estate.

10 12. Moreover, several "Triggering Events" contemplated by the Plan Agent
11 Order have occurred, including:

- 12 i. Defaults in the covenants set forth in Exhibit C – Operational Covenants:
 - 13 a. The Dairy has failed to maintain the total minimum herd size of
14 11,000 head.
 - 15 b. I have been unable to provide AgWest with the original vehicle
16 titles of all Dairy titled vehicles which are AgWest's collateral due
17 to the fact that the Mensonides family has removed many of these
18 vehicle titles.
 - 19 c. The Dairy has suffered from two consecutive months of negative
20 net income under the CPA compiled financial reports in the months
21 of July and August 2022. As detailed more fully above, the July
22 and August 2022 months net income problems are largely due to
23 the state in which the Mensonides family left the Dairy.
- 24 ii. The Dairy has failed to maintain at least cash flow neutral as measured
25 by the Plan Agent Weekly and Monthly Cash Flow Budget and Variance

1 Reports. This is largely due to the increased operating and administrative
2 expenses combined with lower revenues described more fully above.

3 iii. The Dairy has lost its normal manure handling and processing capabilities
4 due to the party responsible for handling the Dairy's liquid manure
5 terminating its agreement with the Dairy prior to the appointment of the
6 Plan Agent.

7 **A. Equipment and Titled Vehicles Motion**

8 13. I have selected Booker Auctions Co. ("Booker") as the auctioneer
9 responsible for selling the Equipment and Titled Vehicles. Booker has agreed to a
10 compensation structure whereby it will be paid a 10% commission rate from the
11 auction proceeds, a 5% buyer's premium and certain other expenses incurred in
12 auctioning the Equipment and Titled Vehicles. I believe that Booker's extensive
13 experience auctioning farming equipment and vehicles in the Eastern Washington area
14 will result in the highest and best offers for the Equipment and Titled Vehicles.

15 14. The Dairy's cash flow problems have limited the options available to me
16 to sell the Dairy Assets. These cash flow problems are due to a variety of unforeseen
17 circumstances, including significant operating and administrative costs, reduced
18 revenues, and the actions taken by the Menonides and others to frustrate my ability
19 to operate the Dairy on a cash-flow positive basis. While I have taken substantial steps
20 towards mitigating these problems, these efforts have come at a great administrative
21 cost and will likely continue until I can consummate the sale of the Dairy Assets. As
22 a result, I have determined that the sale of the Dairy Assets as effectively and
23 efficiently as possible under the circumstances is necessary and believe that the sale of
24 the Equipment and Titled Vehicles by auction held by Booker will help achieve this
25 result.

26 15. I believe that Booker's experience auctioning farming equipment and

1 vehicles in the Eastern Washington area will help maximize the value of the Equipment
2 and Titled Vehicles to the benefit of the Debtors' creditors. The collective value of
3 the Equipment and Titled Vehicles to be sold by auction is expected to net a substantial
4 recovery for the Debtors' estate. I believe that this recovery would likely be
5 unattainable if any other sale procedure was used to sell the Equipment and Title
6 Vehicles. In particular, Booker's experience auctioning assets similar to the
7 Equipment and Titled Vehicles will streamline the process for selling such assets
8 without incurring substantial administrative expenses. By contrast, the sale of all of
9 the Dairy's property on a consolidated basis would require me to incur much greater
10 administrative expenses and involves several contingencies that may jeopardize the
11 sale altogether. Given the Dairy's cash position, I have determined that the sale by an
12 experienced auctioneer on a short timeframe will likely yield the greatest recoveries
13 for the Equipment and Titled Vehicles.

14 **B. Real Property Motion**

15 16. Shortly after my appointment, I retained Skye Root to market, list and sell
16 the Dairy. Since then, Skye Root has gathered requisite information from the Dairy
17 and solicited interest from potential purchasers in the hopes of consummating a sale of
18 the Dairy as a going-concern.

19 17. While Skye Root was working towards the sale of the Dairy as a going-
20 concern, I recognized that there are several potential barriers to selling the Dairy under
21 a private sale with acceptable terms. As a result, I determined that the sale of the Real
22 Property with Skye Root as the broker who will conduct the auction of the Real
23 Property is in the best interests of the Debtors' estate.

24 18. I believe that Skye Root's extensive experience facilitating farmland sales
25 throughout the Western United States will result in the highest and best offer for the
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1 Real Property. I further believe that Skye Root's familiarity with the Real Property
2 through its initial retention and its working relationship with parties who have already
3 expressed interest in purchasing the Dairy will also help yield the highest and best
4 offer for the Real Property.

5 19. Skye Root has agreed to a compensation structure whereby it will be paid
6 a 2% commission for a sales transaction without a cooperating broker, and a 3%
7 commission rate (split 50/50) for a sales transaction with a cooperating broker from
8 the auction proceeds and certain other expenses incurred in auctioning the Dairy. Skye
9 Root's commission rate will be inclusive of the aggregate purchase price received for
10 the total amount of property sold.

11 20. To the extent the Dairy's existing funds are insufficient to do so and to
12 the extent that any livestock or feed are sold pursuant to the Real Property Motion and
13 not the Motion to Sell Remaining Livestock [Docket No. 1067] (which also requests
14 this specific relief), I shall set aside up to \$2.25 million in sale proceeds derived from
15 the various sales of livestock to be used to pay the Dairy's vendors in the ordinary
16 course of business and pursuant to the payment terms now existing between the Dairy
17 and such vendors. AgWest has agreed to the proposed reserve of \$2.25 million which
18 I have estimated as the amount necessary to pay the Dairy's vendors to satisfy their
19 outstanding claims upon the conclusion of this case. I intend to set aside this amount
20 out of an abundance of caution and to avoid any potential harm to the Dairy's
21 operations resulting from the failure to pay the Dairy's vendors in the ordinary course
22 of business and pursuant to the payment terms now existing between the Dairy and
23 such vendors.

24 21. Once the Dairy's remaining livestock have been sold, whether pursuant
25 to this Motion or the Motion to Sell Remaining Livestock, I will sell the Dairy's
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1 remaining Feed Inventory on the open market by soliciting interest from potential
2 purchasers in the greater Eastern Washington area.

3 22. The Dairy's cash flow problems have limited the options available to me
4 to sell the Dairy Assets. These cash flow problems are due to a variety of unforeseen
5 circumstances, including significant operating and administrative costs, reduced
6 revenues, and the actions taken by the Mensonides and others to frustrate my ability
7 to operate the Dairy on a cash-flow positive basis. While I have taken substantial steps
8 towards mitigating these problems, these efforts have come at a great administrative
9 cost and will likely continue until I can consummate the sale of the Dairy Assets. As
10 a result, I have determined that the sale of the Dairy Assets as effectively and
11 efficiently as possible under the circumstances is necessary and believe that the sale of
12 the Real Property by auction held by Skye Root and pursuant to the Bidding
13 Procedures and Additional Auction Terms will help achieve this result.

14 23. I believe that Skye Root's experience facilitating farmland sales
15 throughout the Western United States will result in the highest and best offer for the
16 Real Property. The sale of the Real Property by auction is expected to net a substantial
17 net recovery for the Debtors' estate. I believe that this recovery would likely be
18 unattainable if any other sale procedure was used to sell the Real Property. In
19 particular, Skye Root has already gained familiarity with the Real Property through its
20 initial retention to sell the Dairy as a going-concern. As part of that process, Skye
21 Root began soliciting interest from potential purchasers for the Dairy. These parties,
22 who now have a solid understanding of the Dairy due to Skye Root's efforts, may now
23 submit bids at the auction which will likely result in a competitive process and raise
24 the ultimate purchase price for the Real Property.

25 24. Implementing the sale of the Real Property pursuant to the Bidding
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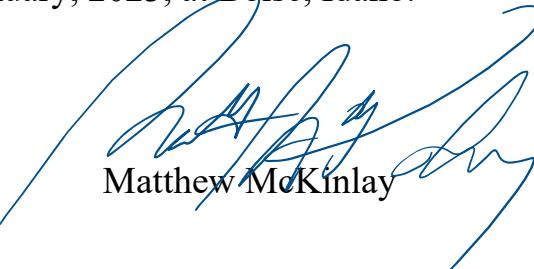
1 Procedures and Additional Auction Terms presents prospective purchasers with the
2 opportunity to purchase the Real Property and substantially all of the Dairy Assets on
3 a consolidated basis which could even further reduce administrative expenses and
4 potentially yield a greater sale price. By contrast, continuing to seek a purchaser for
5 the Real Property or the Dairy as a going concern outside of the auction process would
6 require me to incur much greater administrative expenses and involves several
7 contingencies that may jeopardize the sale altogether. Given the Dairy's cash position,
8 I have determined that the sale by an experienced listing agent on a short timeframe
9 will likely yield the greatest recoveries for the Real Property.

10 25. Postponing the sale of the Feed until all of the Dairy's livestock have been
11 sold is necessary for the health and welfare of the Dairy's livestock. Moreover, I
12 cannot yet quantify the amount of Feed to be sold given that the Dairy's livestock will
13 be sold on a rolling and/or consolidated basis pending the outcome of the bidding
14 process set forth in the Real Property Motion. As such, I believe that the most cost-
15 effective means of selling the Feed will be to solicit interest from potential purchasers
16 in the Eastern Washington area once the amount to be sold is readily ascertainable.

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Dated this 10th day of January, 2023, at Boise, Idaho.

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Matthew McKinlay

DECLARATION OF MATTHEW MCKINLAY -
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CERTIFICATE OF SERVICE

I, Janine E. Hume declare as follows:

I am employed in the County of Multnomah, state of Oregon; I am over the age of eighteen years and am not a party to this action; my business address is 1000 S.W. Broadway, Suite 1400, Portland, Oregon 97205-3089, in said county and state.

I certify that on January 10, 2023, I served the **DECLARATION OF MATTHEW MCKINLAY** on all ECF participants as indicated on the Court's Cm/ECF system.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: January 10, 2023.

/s/ Janine E. Hume
Janine E. Hume, Legal Assistant